

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 20/2630 SC/CRML

BETWEEN: Public Prosecutor

AND: Samuel Kalwas
Defendant

Date of hearing: 29 October 2020
By: Justice G.A. Andrée Willens
Counsel: Ms L. Lunabek for Public Prosecutor
Ms K. Karu for the Defendant
Date of Decision: 16 November 2020

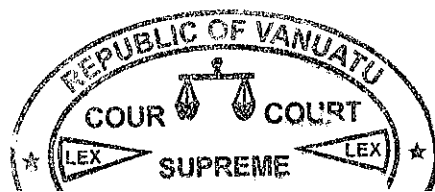
SENTENCE

A. Introduction

1. Mr Kalwas pleaded guilty to obtaining money by deception.

B. Facts

2. On 19 August 2020 Mr Kalwas went to the offices of the complainant and advised him that Sam Kalta had passed away earlier that morning and requested that the complainant pay some of the funeral expenses. The two subsequently went and purchased 2 18kg bags of rice, a packet of salt, a packet of noodles, a bottle of juice and 5kg of chicken drum sticks, at a total costs of approximately VT 8,000.
3. Mr Kalwas further sought VT 1,000 to help him to transport the purchases to the funeral.
4. On 20 August 2020, the complainant discovered that Mr Kalta had not passed away.



5. Mr Kalwas admitted the deception when arrested and cautioned one week later.

C. Sentence Start Point

6. The sentence start point is to be assessed by having regard to the maximum sentence available for this type of offending, and factoring in both the aggravating and mitigating aspects of the offending.
7. The maximum penalty for this type of offending is 12 years imprisonment.
8. There are no mitigating factors to the offending.
9. However, the aggravating factor that needs to be taken into account, is the amount obtained with little prospect of reparation and the nature of the deception involved which preyed on the sympathy of the complainant.
10. The sentence start point I adopt for this offending, on a totality basis, is 12 months imprisonment.

D. Personal Factors

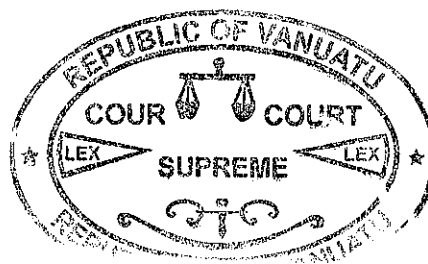
11. Mr Kalwas pleaded guilty at the first available opportunity. That indicates that he has accepted his wrong-doing. It may also indicate remorse. It has saved Court time and expense. For that reason I reduce the sentence start point by 25%.

12. Mr Kalwas' relevant personal factors are as follows:

- Mr Samson is now 31 years old. He was living in a de facto relationship with 3 children born of the union.
- He provided for the family by working at Santo Hardware for 18 months before commencing employment with the Casablanca Restaurant for 4 months. Latterly he has been a bus driver. He has good relations with his family and the community.
- No custom reconciliation ceremony has taken place. Mr Kalwas has indicated that he is willing to attend if the complainant is willing. He claims to have repaid VT 4,000 to the complainant but that has not been confirmed.

13. There is no reduction for these unexceptional personal factors.

14. Mr Kalwas has previous convictions. By my count, he has a total of 15 convictions, nearly all involving dishonesty. He has been dealt with by the Courts on 9 separate occasions, with the majority involving fines, suspended imprisonment sentences and sentences of actual imprisonment. The uplift to reflect this is set at 6 months, a figure accepted by Ms Malites.



E. Sentence:

15. The end sentence that I impose is 14 months imprisonment.
16. Mr Kalwas has been remanded in custody for 2 months. The sentence start date is accordingly back-dated to 6 September 2020 to take into account the time he has already served and to preserve his parole rights.

F. Suspension:

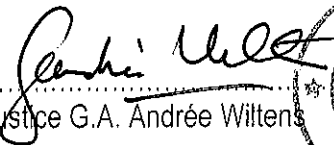
17. This offending is serious, and exhibits blatant dishonesty. The repeat nature of Mr Kalwas' offending dictates that a suspension of any part of the sentence is simply not appropriate. That type of sentence has been previously imposed, with no affect on his subsequent behaviour.

G. Other

18. Mr Kalwas has 14 days to appeal if he disagrees with this sentence.

Dated at Port Vila this 16th day of November 2020

BY THE COURT


Justice G.A. Andrée Wiltens

